Supreme Court, U. S.
FILED
MAY 29 1975
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1974

No. 74-1503

EDWARD KECKEISEN,

Petitioner,

vs.

INDEPENDENT SCHOOL DISTRICT 612, Glenwood, Minnesota; RICHARD KAUS, Chairman of School Board, Independent School District 612; JOANNE SOLMONSON, Clerk of School Board, Independent School District 612; LeROY KNUTSON, Member of School Board, Independent School District 612; ROBERT ROBARDS, Member of School Board, Independent School District 612; RICHARD THOMPSON, Member of School Board, Independent School District 612; ELAINE BENNETT, Member of School Board, Independent School District 612; JERRY LEEDAHL, Member of School Board, Independent School District 612,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

PETITION FOR WRIT OF CERTIORARI BY EDWARD KECKEISEN

WILLIAM B. KORSTAD
KORSTAD & OLANDER
Attorneys for Petitioner
1214 Title Insurance Bldg.
Minneapolis, Minnesota 55401
IVAN B. GLUCKMAN
Attorney for Petitioner
1904 Association Drive
Reston, Virginia 22019

1975—Northwest Brief Printing Co., 501 Park Ave., Minneapolis 55415 338-5078

TABLE OF CONTENTS

	Page
Opinions Below	2
Jurisdiction	2
Issue	2
Applicable Constitutional and Statutory Provisions	3
Statement of the Case	3
Basis for Federal Jurisdiction in the Court of First Instance	6
Reasons for Granting the Writ:	
The United States Court of Appeals for the Eighth Circuit has Decided Federal Questions of Substance not in Accord with Previous Decisions of this Court	9
Marriage is a Fundamental Civil Right to be Protected Under the United States Constitution	9
Conclusion	12

TABLE OF AUTHORITIES

Brenden v. Independent School District 742, 342 F. Supp. 1224 (D. Minn. 1972), aff'd. at 477 F.2d 1292 (1973)	7
Griggs v. Duke Power Co., 401 U.S. 424 (1971)	11
Loving v. Commonwealth of Virginia, 388 U.S. 1, 87 S. Ct. 1817 (1967)	9, 10, 11
Tinker, et al. v. Des Moines Independent Community School District, et al., 89 S. Ct. 733, 393 U.S. 503 (1969)	10
Whitner v. Davis, 410 F.2d 24 (1961)	6

Statutes:

28 U.S.C., Section 1254 (1) 2
28 U.S.C. Section 1343 6
42 U.S.C. Section 1983 .....6, 7
Minn. Stat. 125.12 .....3, 4, 6, 10, 12

United States Constitution:

First Amendment 3
Fourth Amendment 3
Fifth Amendment 3
Ninth Amendment 3, 6, 9
Fourteenth Amendment 3, 6, 9

IN THE

Supreme Court of the United States

October Term, 1974

No. ———

EDWARD KECKEISEN,

Petitioner,

vs.

INDEPENDENT SCHOOL DISTRICT 612, Glenwood, Minnesota; RICHARD KAUS, Chairman of School Board, Independent School District 612; JOANNE SOLMONSON, Clerk of School Board, Independent School District 612; LeROY KNUTSON, Member of School Board, Independent School District 612; ROBERT ROBARDS, Member of School Board, Independent School District 612; RICHARD THOMPSON, Member of School Board, Independent School District 612; ELAINE BENNETT, Member of School Board, Independent School District 612; JERRY LEEDAHL, Member of School Board, Independent School District 612,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

---

PETITION FOR WRIT OF CERTIORARI BY EDWARD KECKEISEN

Petitioner, Edward Keckeisen, prays that this Court issue its Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit to review the judgment of that Court in File No. 74-1326, dated February 28, 1975.

OPINIONS BELOW

The opinion of the United States District Court, District of Minnesota, Sixth Division, by Chief Judge Edward J. Devitt, is reproduced in the Appendix hereto, beginning at page 33.

The opinion of the United States Court of Appeals for the Eighth Circuit by Chief Judge James H. Meredith is reported in 509 F.2d 1062, and is reported in the Appendix hereto, beginning at page 35.

JURISDICTION

The decision of the United States Court of Appeals for the Eighth Circuit was filed February 10, 1975. Petition for Rehearing was then timely filed, but was denied on February 28, 1975. Judgment was also entered on February 28, 1975, which judgment is here sought to be reviewed.

This Court has jurisdiction to review pursuant to 28 *U.S.C.*, Section 1254 (1).

ISSUE

Did the United States Court of Appeals for the Eighth Circuit err in holding that the regulation, as promulgated by the Respondents in this action, prohibiting marriage between an administrator and a physical education teacher, was permissible under the Constitution, and that the Petitioner could be removed from his position of high school principal based on that regulation, even though Petitioner and his wife advised the Board she would resign if the regulation was held Constitutional?

Did the United States Court of Appeals for the Eighth Circuit err when it held that the school board could terminate the Petitioner's contract of employment based on anticipatory problems?

APPLICABLE CONSTITUTIONAL AND STATUTORY PROVISIONS

The First, Fourth, Fifth, Ninth and Fourteenth Amendments to the *United States Constitution* are set forth in the Appendix beginning at page 23.

The Minnesota Statute involved, *Minn. Stat.* 125.12, is set forth in the Appendix beginning at page 26.

STATEMENT OF THE CASE

The facts in the case are simple and undisputed. The Petitioner was a certificated principal at the Glenwood High School in Minnesota, which is a part of Independent School District 612. Petitioner has made a motion for a temporary restraining order restraining Respondents from terminating the Petitioner's contract of employment as principal. The Petitioner is a tenured teacher under the *Minnesota Statutes* Section 125.12 and, therefore, his termination is subject only to termination pursuant to *M.S.A.* 125.12.

On June 12, 1972, the Respondent school board adopted the following policy, to-wit:

> "Employment of married couples:
>
> It shall be the policy of the Board of Education not to employ the combination of husband and wife

in the schools of the District where a conflict of interest could arise; said policy is to apply to the following:

1. Administrator-teacher relationship.

2. Husband and wife combination in the same building.

3. All other situations where a conflict of interest occurs."

That in December of 1972 said Petitioner married Lois E. Korbel and that said Lois E. Korbel was and is employed as a physical education teacher and a girls' athletic coach; that Petitoner has been in the employment of Respondent for a period of at least three years and that his wife has been in the employment of the Respondent for a period of at least six years.

Respondent gave notice to the Petitioner on March 1, 1973, that the board was proposing to terminate this employment contract effective at the end of his then annual contract terminating June 30, 1973, though as heretofore stated, Petitioner was a tenured teacher under Minnesota Statutes and, therefore, said contract would not technically terminate but would automatically renew each year unless legally terminated pursuant to *M.S.A.* 125.12.

Because of the charges made against Petitioner on the basis of his marriage, plus a charge of "insubordination" under the statute, Petitioner demanded a public hearing to determine under oath what the particular charges were; the public hearing was held on the 29 day of March, 1973, and on the same day the school made findings of fact and conclusions of law determining that Petitioner's contract of employment should be terminated at the end of his then

annual period, June 30, 1973; that in the school board findings the charge of "insubordination" was dropped and the only charge remaining was that of his marriage to said Lois E. Korbel in violation of the recently adopted rules of the Respondent.

There is no testimony nor findings in the record to show any lack of efficiency, capability or competency on behalf of the Petitioner.

The facts show that at the time of employment of either Petitioner or his wife, the Respondent did not have a policy or a rule or a regulation prohibiting the marriage as specified above but that this rule was adopted only on the 12 day of June, 1972, after the prospective marriage of the Petitioner and said Lois E. Korbel was known of by the Respondents.

Petitioner on the 25 day of January, 1973, advised the school board that he and his wife felt this rule was unconstitutional but in the event that the rule was held constitutional, that his wife would resign. The verbatum letter is as follows:

January 25, 1973

Winter and Nelson, Ltd.
Old Pope County Bank Building
Glenwood, Minnesota 56334

Gentlemen:

I am in receipt of your letter as of Friday, January 20, 1973; we have consulted with the attorney from the Minnesota Association of Secondary School Principals' office and we feel that the board policy is unconstitutional and unreasonable, therefore, neither of us plans to resign.

Hereafter Mr. Halverson, Assistant Principal, will be responsible for the evaluation of duties of Mrs.

Keckeisen. We wish to inform you, however, that if the courts decide that the board policy is unconstitutional, my wife, Lois, will resign.

Thank you.

Sincerely,

/s/ Edward Keckeisen
/s/ Lois E. Korbel

The Petitioner has proceeded in Federal Court pursuant to Section 1343 of Title 28 and Section 1983 and 1985 of Title 42 of the *U. S. Code* and alleged a violation of the Ninth and Fourteenth Amendments to the *U. S. Constitution* as an unconstitutional invasion of privacy, denying Petitioner equal protection and due process under the Constitution.

The Petitioner further alleges that the action taken by the Respondent school board was arbitrary, unreasonable and unwarranted, oppressive, under an erroneous theory of law, and without adequate and proper evidence to support any of its findings and in violation of the teacher (administrators and principals are defined as teachers) termination statute, Section 125.12, *M.S.A.*

On the 12 day of March, 1974, the Honorable Edward J. Devitt, Chief Judge of the United States District Court, District Court of Minnesota, Sixth Division, filed his decision dismissing said action. The case was then appealed to the United States Court of Appeals for the Eighth Circuit, where the decision of the District Court was affirmed.

BASIS FOR FEDERAL JURISDICTION IN THE COURT OF FIRST INSTANCE

In *Whitner v. Davis,* 410 F.2d 24 (1961), the defendants contended that plaintiff had failed to state a claim

under the Civil Rights Act because there is no constitutional right to public employment. The Court held:

> While there may be no constitutional right to public employment as such, there is a constitutional right to be free from unreasonably discriminatory practices with respect to such employment. *Rolfe v. County Board of Education of Lincoln County, Tennessee,* 6 Cir., 391 F.2d 77, 80; *Wall v. Stanly County Board of Education,* 4 Cir., 378 F.2d 275, 277. It is also established that, apart from discrimination, public employment may, under some circumstances, be so supervised and controlled as to raise the question of whether there has been an impairment of constitutional rights. See *Pickering v. Board of Education,* 391 U.S. 563, 88 S. Ct. 1731, 20 L. Ed.2d 811.

Further, in the case of *Brenden v. Independent School District 742,* 342 F. Supp. 1224 (D. Minn. 1972), aff'd. at 477 F.2d 1292 (1973), the court held that it did indeed have jurisdiction over school districts and that school districts were persons within the meaning of 42 *U.S.C.,* Section 1983 and 28 *U.S.C.* Section 1343. While a statewide organization such as the Minnesota State High School League is not involved in the instant case, it would seem that the application of the Civil Rights Act to a voluntary association and individual school districts is applicable in this case to the individual school district. The district court in the *Brenden* case held on the jurisdictional issue and the cause of action issue as follows:

> The Court has jurisdiction over this cause of action by reason of 42 U.S.C. Section 1983 and 28 U.S.C. Section 1343 (3). Under 42 U.S.C. Section 1983, any person who suffers the deprivation of civil rights guaranteed to him by the Constitution, by persons acting

under color of state law may bring suit for the redress of those deprivations. It is clear that the State High School League and the defendant school districts are persons within the meaning of 42 U.S.C. Section 1983. It is also clear to this Court that the defendants are acting under color of state law. Although the Minnesota State High School League is a voluntary organization, the original allowance for public high schools to join such an association or organization is authorized pursuant to Minnesota law. Minn. Stat. Ann. Section 192.12. In addition, the rules governing League members are promulgated pursuant to a procedure which integrally involves the member school districts in the decision-making process. Beyond this, the ultimate enforcement of the rules becomes the responsibility of the member schools and the public officials of those schools and school districts. In such a situation, where there is a tremendous public interest in educational functions, and where the public school machinery of the state is so involved in the effectuation and enforcement of rules which bind all public high schools in the state, the Court is left with no conclusion other than that defendant Minnesota State High School League and the defendant school districts are acting under color of state law. Because the defendants are persons acting under color of state law, and because the defendants allege a deprivation of civil rights under the fourteenth amendment, the Court does have jurisdiction to determine the questions raised in this action on their merits. (Footnote omitted.)

And the Eighth Circuit Court of Appeals specifically agreed with the above language at 477 F.2d 1295:

> We agree with the trial court and affirm its decision in this regard. See, Mitchell v. Louisiana High School Athletic Association, 430 F.2d 1155 (5th Cir. 1970); Louisiana High School Athletic Ass'n v. St. Augustine High Sch., 396 F.2d 224 (5th Cir. 1968); Oklahoma High School Athletic Association v. Bray, 321 F.2d 269 (10th Cir. 1963); Reed v. The Nebraska School Activities Association, 341 F. Supp. 258 (D. Neb. 1972); Sex Discrimination in High School Athletics, *supra* at 350.

It is further true because of the letter sent by Petitioner to the school board dated January 25, 1973, where he and his wife specifically stated that the wife would resign if the rule was found constitutional and, nevertheless, the school board proceeded against the Petitioner and not his wife; otherwise, the Petitioner and his wife could have satisfied the rule of the school board if said rule were found to be constitutional. An opinion based on these facts and the law material thereto is not covered with statewide application or state law and applies only to this single school district and this single principal.

REASONS FOR GRANTING THE WRIT

THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT HAS DECIDED FEDERAL QUESTIONS OF SUBSTANCE NOT IN ACCORD WITH PREVIOUS DECISIONS OF THIS COURT

Marriage is a Fundamental Civil Right to be Protected Under the United States Constitution

Marriage is a civil right which will be protected under the *Constitution of the United States* under the Ninth Amendment right to privacy, as applied to the States by the Fourteenth Amendment. This Court has held in *Loving v. Commonwealth of Virginia,* 388 U.S. 1, 87 S. Ct.

1817 (1967), that "Marriage is one of the basic civil rights of man, fundamental to our very existence and survival," and held that the Equal Protection Clause of the Fourteenth Amendment requires consideration of whether classifications drawn by any statute constitute arbitrary and invidious discrimination.

In the case at hand, what we have is not a prohibition against marriage, as in the *Loving* case, but we have a situation where if two people are teachers in a school district and want to marry, the regulation in the instant case does not prohibit that marriage but requires that one of the parties resign his or her position in the school district. It is the Petitioner's contentions that this is an unconstitutional invasion of privacy and, further, is contrary to Minnesota law. The requirements for termination of a tenured teacher or principal are set out fully in the Appendix hereto, Section 125.12, *M.S.A.* (A-26) It is the contention of the Petitioner that the requirements of that statute are not satisfied when the school board arbitrarily terminates his contract because he and the teacher got married.

The school board acted arbitrarily and capriciously in terminating the Petitioner's contract, anticipating that the situation would cause problems within the school district. While this case is distinguishable from dealing with the First Amendment freedoms of students, it would seem only reasonable that the test for the expulsion of a student should be not more stringent than the standards for the termination of a teacher's contract.

The standards as set forth in *Tinker, et al. v. Des Moines Independent Community School District, et al.*, 89 S. Ct. 733, 393 U.S. 503 (1969) make it quite clear that in the abridgement of constitutional rights, which this Court

has found marriage to be, *Loving v. Virginia, supra,* that the state must have some showing of disruption. It may probably be unnecessary to have material and substantial disruption but at least the school board should be required to show that there is some disruption and not rely on a series of "could cause", "might cause" or "perhaps will cause" kinds of argument to show that their policy is not in balance, placing a greater burden on marriage than in protecting the board in its fundamental duty to provide education to youngsters in a school district.

In this case, while the Petitioner and his wife were together in the school building for nearly a half a year, there is not one shred of evidence anywhere in the record that shows there was any disruption in any manner. In addition, more than adequate supervision of the wife-teacher job was shown to be required by administrators other than her husband.

The regulation that this appeal is analogous to the rules that were appealed in *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971), while a conflict of interest policy, may very well seem non-discriminatory on its face, its effect is that of discrimination. If this policy is allowed to stand, then school districts throughout the country could proceed to eliminate women teachers merely by passing the rule that teachers within the system may not be married to other teachers within the system. If this policy were to be equitable, school boards could remove teachers without benefit of following the requirement of Minnesota Statute provisions and in a highly discriminatory manner, thereby further discriminating not only against marriage but discriminating on the basis of sex.

CONCLUSION

The action taken by the board is unreasonable, arbitrary and is not substantiated by the evidence and does not have a rational basis in law. There is no violation of *M.S.A.* 125.12 of the Minnesota termination statute which requires specific grounds for termination of a teacher, wherein administrators, principals and teachers are all defined as "teachers."

There is no showing that the ability of the Petitioner, his relations with the faculty or students or the board is in any way diminished or compromised or that any of his administrative activities as principal would be prejudiced or affected by his marriage. There is no showing of disruption and certainly not substantial disruption as required by the U. S. Supreme Court in these school cases. The Petitioner has in good faith advised the board that if for some reason the law is held constitutional, his wife will resign and, therefore, there is no actual violation but only an arbitrary proceeding by the board against the Petitioner without any evidence to substantiate their arbitrary and capricious rule and action since such rule was passed.

This case offers an excellent opportunity for this Court to clarify its rulings on substantial disruption pertaining to teachers.

The Petitioner, therefore, respectfully asks that this Court grant his Writ of Certiorari.

Respectfully submitted,

WILLIAM B. KORSTAD
KORSTAD & OLANDER
Attorneys for Petitioner
1214 Title Insurance Building
Minneapolis, Minnesota 55401
IVAN B. GLUCKMAN
Attorney for Petitioner
1904 Association Drive
Reston, Virginia 22019

Supreme Court, U. S.
FILED
MAY 29 1975
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1974

No. 74-1503

EDWARD KECKEISEN,

Petitioner,

vs.

INDEPENDENT SCHOOL DISTRICT 612, Glenwood, Minnesota; RICHARD KAUS, Chairman of School Board, Independent School District 612; JOANNE SOLMONSON, Clerk of School Board, Independent School District 612; LeROY KNUTSON, Member of School Board, Independent School District 612; ROBERT ROBARDS, Member of School Board, Independent School District 612; RICHARD THOMPSON, Member of School Board, Independent School District 612; ELAINE BENNETT, Member of School Board, Independent School District 612; JERRY LEEDAHL, Member of School Board, Independent School District 612,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

APPENDIX TO PETITION FOR WRIT OF CERTIORARI BY EDWARD KECKEISEN

CALLAGHAN & NELSON
Attorneys for Respondents
Glenwood, Minnesota 56334
WINTER, NELSON & GROTH
Attorneys for Respondents
Glenwood, Minnesota 56334
PETERSON, POPOVICH, KNUTSON & FLYNN
Attorneys for Amicus Curiae
314 Minnesota Building
St. Paul, Minnesota 55101

WILLIAM B. KORSTAD
KORSTAD & OLANDER
Attorneys for Petitioner
1214 Title Insurance Bldg.
Minneapolis, Minnesota 55401
IVAN B. GLUCKMAN
Attorney for Petitioner
1904 Association Drive
Reston, Virginia 22019

1975—Northwest Brief Printing Co., 501 Park Ave., Minneapolis 55415 338-5078

INDEX

Notice of Termination of Continuing Contract of Edward Keckeisen A-1
Resolution A-2
Findings of Fact, Decision and Order A-3
Complaint A-11
Answers A-18, A-20, A-22
The U. S. Constitution A-23
Employment; contracts, termination A-26
Order of Dismissal A-34
Memorandum A-35
Order A-44
Notice of Filing A-45

A-1

NOTICE OF TERMINATION OF CONTINUING CONTRACT OF EDWARD KECKEISEN

March 29, 1973

Mr. Edward Keckeisen
Glenwood, Minnesota

Dear Mr. Keckeisen:

You are hereby notified that at a special meeting of the School Board of Independent School District 612, held on March 29, 1973 a resolution was adopted by a majority roll call vote of the full membership of the School Board, that your continuing contract as a high school principal of Independent School District 612 be terminated effective at the end of the 1972-73 school year pursuant to Minnesota Statutes 125.12, said date being June 30, 1973.

A copy of the resolution duly adopted by the School Board is attached hereto for your information as well as the Findings of Fact, Decision and Order in connection with the hearing held on March 29, 1973.

Yours very truly,

School Board of Independent
School District 612
/s/ JoAnne Solmonson
JoAnne Solmonson, Clerk

RESOLUTION

LeRoy Knutson introduced the following resolution and moved its adoption:

RESOLUTION TO TERMINATE THE CONTRACT OF EDWARD KECKEISEN

BE IT RESOLVED by the School Board of Independent School District 612, as follows:

1. That the continuing contract of Edward Keckeisen, a high school principal of said school district, is terminated effective at the end of the 1972-73 school year pursuant to MS 125.12.

2. That written notice be sent to said Edward Keckeisen regarding the termination as provided by law and said notice shall be in substantially the following form:

NOTICE OF TERMINATION OF CONTINUING CONTRACT OF EDWARD KECKEISEN

Mr. Edward Keckeisen
Glenwood, Minnesota

Dear Mr. Keckeisen:

You are hereby notified that at a special meeting of the School Board of Independent School District 612, held on March 29, 1973, a resolution was adopted by a majority roll call vote of the full membership of the School Board, that your continuing contract as a high school principal of Independent School District 612 be terminated effective at the end of the 1972-73 school year pursuant to Minnesota Statutes 125.12, said date being June 30, 1973.

A copy of the resolution duly adopted by the School Board is attached hereto for your information as well as

the Findings of Fact and the Decision in connection with the hearing held on March 29, 1973.

Yours very truly,

School Board of Independent
School District 612
/s/ JoAnne Solmonson
JoAnne Solmonson, Clerk

3. That written notice of the Findings of Fact and Decision, together with this resolution be served upon said Edward Keckeisen, prior to April 1, 1973.

That the motion for adoption of the foregoing resolution was duly seconded by Elaine Bennett and upon vote being taken thereon, the following voted in favor thereof; unanimous vote of the Board, and the following voted against the same; none, whereupon said resolution was declared duly passed and adopted.

STATE OF MINNESOTA

COUNTY OF POPE

INDEPENDENT SCHOOL DISTRICT 612

vs.

EDWARD KECKEISEN

FINDINGS OF FACT, DECISION AND ORDER

The above entitled matter came on for public hearing at the District Court room in the Court House of Pope County, Glenwood, Minnesota, on the 29th day of March, 1973

before the Board of Education of Independent School District 612, all members of said Board being present during the hearing.

James F. Nelson of Winter and Nelson, Ltd., and Norvell C. Callaghan of Callaghan and Nelson, appeared as counsel on behalf of Independent School District 612. William Korstad and Bruce Olander of Korstad and Easton, appeared as counsel on behalf of Edward Keckeisen.

The Board of Education of Independent School District 612 having considered the files, records and all evidence received in connection with the proposed termination of the continuing contract of Edward Keckeisen, high school principal of said school district; said termination to be effective at the end of the 1972-73 school year pursuant to MS 125.12 does hereby make its Findings of Fact, Decision and Order:

FINDINGS OF FACT

1. That Edward Keckeisen is employed as high school principal by Independent School District 612, Glenwood, Minnesota for the school year 1972-73 and has been so employed in addition thereto for the school years 1970-71 and 1971-72.

2. Since the year 1965 and for many years prior thereto, there existed a policy in Independent School District 612 of not hiring married couples to teach in the system and that said policy continued until June 12, 1972 on which said date the Board further defined such policy.

3. That on June 12, 1972 the Board of Education of Independent School District 612 duly adopted the following policy, to-wit:

"Employment of married couples:

It shall be the policy of the Board of Education not to employ the combination of husband and wife in the schools of the District where a conflict of interest could arise; said poilcy is to apply to the following:

1. Administrator-teacher relationship

2. Husband and wife combination in the same building.

3. All other situations where a conflict of interest occurs.

Where the employment of a husband and wife in Independent School District 612 causes a conflict of interest to occur or should one of the above two conditions arise, that then either the husband or the wife shall resign. In the event neither the husband or the wife resigns within 10 days of notification of the conflict of interest or the occurrence of the above conditions that then and in that event the Board of Education shall determine which position should be terminated according to statute."

which policy appears in the minutes of the said Board for the meeting of June 12, 1972.

3. That in December of 1972 said Edward Keckeisen married Lois Korbel and that said Lois E. Korbel is also employed as a physical education teacher in the secondary school of Independent School District 612, Glenwood, Minnesota of which Edward Keckeisen is the principal thereof.

4. That one Lois Korbel was a duly employed teacher

of physical education in the secondary school of Independent School District 612 for the school year 1972-73.

5. That the minutes of the School Board meeting of June 12, 1972 were duly published on the 20th day of July, 1972 in the Pope County Tribune which is the official newspaper for publication of Independent School District 612 and that in June, 1972 copies of said policy were mailed to all employees, including Edward Keckeisen and Lois Korbel.

6. That Norbert Kerfeld, as superintendent of said School District in May, 1972 discussed with Edward Keckeisen the then existent policy of the said school as to the employment of married couples in the School District.

7. That one the 21st day of December, 1972 Edward Keckeisen and Lois Korbel were married and ever since that time have been, and now are, husband and wife.

8. That Edward Keckeisen as principal of secondary schools of the School District and Lois Korbel (now Lois Keçkeisen) performed their duties in the same school building and Edward Keckeisen is the direct supervisor of Lois Keckeisen in the performance of her duties as a teacher.

9. That Edward Keckeisen as principal performs those duties normally performed by a principal in a school system being an administrative officer of the school system responsible and under the direct control of the superintendent of schools and acts as supervisor of all teachers in the secondary school system; that the supervised duties of the principal are as follows:

a. Evaluation of work and programs of all teachers.

b. Evaluation of performance of all teachers.

c. Handling of disciplinary problems in class, including such problems as disciplinary matters relating to the teacher, parent and pupil.

d. Handling of staff moral problems.

e. Oral and written reports evaluating the performance of the duties of teachers which reports are made to the superintendent.

f. Determining and recommending to the superintendent the purchase and distribution of teacher's aids, supplies and equipment for all the teachers.

g. Assignment of non-class room duties to various teachers including study hall, hall duty and chaperoning athletic and social events.

h. Assignment of classrooms to various teachers.

i. Recommendations as to establishment of the curriculum for the school and the various teachers.

j. General supervision of all teachers in the secondary school system.

That the said duties of the principal apply to all teachers in the secondary school system including Lois Keckeisen, the wife of said principal.

10. That on January 18, 1973 Independent School District 612 through its attorney, James F. Nelson, gave written notice to said Edward Keckeisen of his violation of the above entitled policy of employment of married couples and that on January 25, 1973 was advised by Edward Keckeisen and Lois E. Keckeisen that neither of them would resign and that said Edward Keckeisen and Lois E. Keckeisen

continued to violate and disregard completely the policy of employment of married couples.

11. On March 1, 1972 School Board Exhibit "3" was personally served upon Edward Keckeisen and consisted of the following policies:

a. Letter of proposed termination dated March 1, 1973.

b. Employment of married couples policy.

c. Notice of deficiency dated January 18, 1973.

d. Letter of January 25, 1973 from Edward and Lois Keckeisen advising that they would not comply with policy of the Board in connection with employment of married couples.

12. That Edward Keckeisen is employed by the School District as a secondary principal and cannot be transferred in the school system to the elementary school, because Edward Keckeisen does not have certification for elementary administration or education and that the position of elementary principal, of which there is only one in the school system, is presently held by a tenure teacher; that Lois Keckeisen cannot be transferred to the elementary education building as the position as to which she is qualified to fill is presently held by a tenure teacher and Lois Keckeisen's contract is for employment as a secondary instructor.

13. That a conflict of interest exists between Lois Keckeisen and Edward Keckeisen as teacher and administrator in their employment by the School District.

DECISION AND ORDER

That the continuing contract of Edward Keckeisen, high school principal of said school district should be terminated effective at the end of the 1972-73 school year pursuant to MS 125.12 upon the grounds described in said statute and which are specifically as follows:

> Persistent violation of school laws, rules, regulations or directives and more particularly policy of Independent School District 612 on employment of married couples.

That the basis for the above decision is that a conflict of interest arises in the employment of the combination of husband and wife as said Edward Keckeisen, high school principal and Lois E. Keckeisen, teacher, are both employed in the secondary school of Independent School District 612, Glenwood, Minnesota. The decision of the Board of Education is also based upon the following, to-wit:

a. Evaluation of work and programs of Lois E. Keckeisen by her husband Edward Keckeisen, high school principal, is made increasingly more difficult because of the husband and wife relationship.

b. A staff moral problem has occurred by reason of the husband and wife combination within the building of the secondary school.

c. The handling of disciplinary problems in the class room of Lois Keckeisen by her husband, Edward Keckeisen, high school principal, appears to be made increasingly more difficult.

d. Evaluation of teacher performance on the

part of Edward Keckeisen insofar as the performance of his wife, Lois Keckeisenis and cannot be as objective by reason of the husband and wife relationship.

e. Independent School District 612 has an interest in providing more job opportunities to support more family units in the School District and the employment of the combination of husband and wife in the instant case is contrary to the district's interest.

f. The handling of assignments hereinafter described appear to be made increasingly more difficult.

1. Assignment of non-classroom duties to various teachers including study hall, hall duty and chaperoning athletic and social events.

2. Assignment of classrooms to various teachers.

Dated March 30, 1973.

/s/ Richard L. Kaus
Dick Kaus, Chairman
/s/ JoAnne Solmonson
JoAnne Solmonson, Clerk,
Independent School District 612
Glenwood, Minnesota

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
SIXTH DIVISION

CIVIL ACTION, FILE NO. 6-73-158 Civ.

EDWARD KECKEISEN,

Plaintiff,

vs.

INDEPENDENT SCHOOL DISTRICT 612, Glenwood, Minnesota; RICHARD KAUS, Chairman of School Board, Independent School District 612; JOANNE SOLMONSON, Clerk of School Board, Independent School District 612; LEROY KNUTSON, Member of School Board, Independent School District 612; ROBERT ROBARDS, Member of School Board, Independent School District 612; RICHARD THOMPSON, Member of School Board, Independent School District 612; ELAINE BENNETT, Member of School Board, Independent School District 612, and JERRY LEEDAHL, Member of School Board, Independent School District 612,

Defendants.

COMPLAINT

Plaintiff for his cause of action against defendants claims and alleges:

I.

That the jurisdiction of this Court is invoked under Section 1343 of Title 28 and Section 1983 and 1985 of Title 42 of the United States Code.

II.

That at all times herein material, Plaintiff, Edward Keckeisen, was and is a citizen of the United States and the State of Minnesota and a resident of the Village of Glenwood, in the County of Pope.

III.

That at all times herein material, Plaintiff, Edward Keckeisen, was and is certified by the Department of Education, State of Minnesota, as a secondary school principal.

IV.

That at all times herein material, the Defendant School Board was the employer of the Plaintiff, Edward Keckeisen, and that the named individuals are members of the Independent School Board No. 612 and are all citizens of the United States and of the State of Minnesota and reside in Pope County.

V.

That the Plaintiff has been employed by Independent School District No. 612 since 1970.

VI.

That Plaintiff, Edward Keckeisen, has successfully and properly performed and completed all of the duties that have been assigned to him by Defendant School Board during the entire period of Plaintiff's employment as a secondary school principal for Independent School District No. 612.

VII.

That on or about the 12 day of June, 1972, the School Board of Independent School District 612 duly adopted the following policy, to-wit:

"Employment of married couples:

It shall be the policy of the Board of Education not to employ the combination of husband and wife in the schools of the District where a conflict of interest could arise; said policy is to apply to the following:

1. Administrator-teacher relationship

2. Husband and wife combination in the same building.

3. All other situations where a conflict of interest occurs.

Where the employment of a husband and wife in Independent School District 612 causes a conflict of interest to occur or should one of the above two conditions arise, that then either the husband or the wife shall resign. In the event neither the husband or the wife resigns within 10 days of notification of the conflict of interest or the occurrence of the above conditions that then and in that event the Board of Education shall determine which position should be terminated according to statute."

VIII.

That in December of 1972 said Edward Keckeisen married Lois E. Korbel and that said Lois E. Korbel is also employed as a physical education teacher in the secondary

school of Independent School District 612, Glenwood, Minnesota, of which Edward Keckeisen is the principal thereof. That one Lois E. Korbel was a duly employed teacher of physical education in the secondary school of Independent School District 612 for the school year 1972-73 and for several prior years.

IX.

That no conflict of interest or of administrative duties was shown to exist between plaintiff and his wife. That, in fact, the defendants have for a period of years hired as substitute and replacement teachers wives of faculty members without any problems arising therefrom.

X.

That on or about January 12, 1973, the School Board of Independent School District No. 612 by motion duly passed, requested the Board attorney to notify the Plaintiff herein of the policy passed on June 12, 1972, dealing with employment of married couples and inform him that, therefore, he should resign.

XI.

That on or about the 25 day of January, 1973, the Plaintiff sent a letter to the Defendant School Board through its attorney stating that in his opinion the policy was unconstitutional and that at that time neither he nor his wife had any intention of resigning from their respective positions but did state, however, that if a Court were to find said policy constitutional, then Mrs. Keckeisen would resign her position. This letter was signed by both the plaintiff and Mrs. Keckeisen.

XII.

That on or about the 1st day of March, 1973, the School Board of said School District pursuant to Section 125.12, Minnesota Statutes, caused to be served upon Plaintiff notice of a resolution of said Board proposing to terminate Plaintiff's employment contract with said School District, effective at the close of the current school year and specifying the reasons for said termination.

XIII.

That on or about the 12 day of March, 1973, Plaintiff, pursuant to said Section 125.12, Minnesota Statutes, duly requested in writing a public hearing before the School Board.

XIV.

That pursuant to said request and in compliance with the aforementioned statute, said School Board granted a public hearing that commenced on the 29 day of March, 1973, and ended on that same day.

XV.

That on or about the 29 day of March, 1973, said School Board by unanimous vote made Findings and adopted a resolution terminating Plaintiff's employment contract as of the close of the current school year.

XVI.

The action of the School Board in terminating the plaintiff's contract is specifically spelled out in the School Board's Findings of Fact and Conclusions of Law, which are attached hereto.

XVII.

That the said purported School Board policy under which the Plaintiff was terminated is an unconstitutional invasion of the Plaintiff's civil rights under the Ninth Amendment to the United States Constitution as an unwarranted invasion of privacy and further violates the Fourteenth Amendment as denying the Plaintiff equal protection and due process under the laws. The said action of the School Board or the Defendants, Richard Kaus, JoAnne Solmonson, LeRoy Knutson, Robert Robards, Richard Thompson, Elaine Bennett and Jerry Leedahl, in terminating the Plaintiff's contract was entered into and conspired for by the Defendants for the sole purpose of terminating the Plaintiff's contract and said action was arbitrary, capricious and unwarranted.

WHEREFORE, Plaintiff prays for judgment against the Defendants, and each of them, as follows:

1. For a temporary order restraining Defendant School Board from terminating the Plaintiff's contract of employment as principal until such time as the matter is heard on its merits.

2. For an Order enjoining the Defendant School Board from terminating the Plaintiff's contract of employment.

3. For an Order requiring the Defendant School Board to reinstate the Plaintiff under the continuing contract law.

4. For an Order permanently enjoining the School Board or its agents from harassing or otherwise disturbing the Plaintiff in the quiet enjoyment of his civil rights.

5. For an Order requiring the Defendant School Board to pay reasonable attorney's fees in the amount of $3,000.-

00, or such other amount as the Court should deem reasonable and proper under all of the circumstances.

6. For an Order granting judgment in favor of the Plaintiff and against the Defendants as follows:

a. Defendant School Board in the amount of $10,-000.00;

b. Defendant Richard Kaus in the amount of $5,-000.00;

c. Defendant JoAnne Solmonson in the amount of $5,000.00;

d. Defendant LeRoy Knutson in the amount of $5,000.00;

e. Defendant Robert Robards in the amount of $5,000.00;

f. Defendant Richard Thompson in the amount of $5,000.00;

g. Defendant Elaine Bennett in the amount of $5,000.00;

h. Defendant Jerry Leedahl in the amount of $5,-000.00;

as punitive or exemplary damages, or such lesser amount as the Court should deem fair and appropriate and reasonable under all of the circumstances.

6. For judgment in favor of the Plaintiff and against the Defendant for Plaintiff's costs and disbursements herein and

for such other and further equitable and legal relief as the Court deems just.

KORSTAD & OLANDER
Attorneys for Plaintiffs
1214 Title Insurance Building
Minneapolis, Minn. 55401
332-1417

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
SIXTH DIVISION

EDWARD KECKEISEN,

Plaintiff,

vs.

INDEPENDENT SCHOOL DISTRICT 612, Glenwood, Minnesota,

Defendant.

ANSWER

Civil Action File No.

6-73-158 Civil

Defendant for its answer to the complaint of the Plaintiff states and alleges as follows, to-wit:

I.

Admits paragraphs II, III, IV, V, VII, VIII, X, XI, XII, XIII, XIV, XV, and XVI of the Plaintiff's Complaint.

II.

Except as herein specifically qualified, admitted or otherwise answered, denies generally each and every other allegation, matter and thing in said Complaint contained and each and every part thereof.

III.

Alleges that the complaint fails to state claim upon which relief can be granted and further that there is a lack of jurisdiction over the subject matter as the termination of the Plaintiff's contract of employment is not a violation of United States Code or the United States Constitution.

WHEREFORE, this answering Defendant demands the Plaintiff's cause of action be dismissed and that it have its costs and disbursements herein.

WINTER AND NELSON, LTD.
/s/ James F. Nelson
Attorneys for Defendant
Old Pope County Bank Building
Glenwood, Minnesota 56334
Phone 634-4584

CALLAGHAN AND NELSON
/s/ Norvell C. Callaghan
Attorneys for Defendant
Glenwood, Minnesota 56334
Phone 634-4581

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
SIXTH DIVISION

EDWARD KECKEISEN,

Plaintiff,

vs.

RICHARD KAUS, Chairman of School Board, Independent School District 612; JOANNE SOLMONSON, Clerk of School Board, Independent School District 612; LeROY KNUTSON, Member of School Board, Independent School District 612; ROBERT ROBARDS, Member of School Board, Independent School District 612; RICHARD THOMPSON, Member of School Board, Independent School District 612; ELAINE BENNETT, Member of School Board, Independent School District 612, and JERRY LEEDAHL, Member of School Board, Independent School District 612,

Defendants.

ANSWER

Civil Action File No.

6-73-158 Civil

Defendants for their answer to the complaint of the Plaintiff states and alleges as follows, to-wit:

I.

Admits paragraphs II, III, IV, V, VII, VIII, X, XI, XII, XIII, XIV, XV, and XVI of the Plaintiff's Complaint.

II.

Except as herein specifically qualified, admitted or otherwise answered, denies generally each and every other allegation, matter and thing in said Complaint contained and each and every part thereof.

III.

Alleges that the complaint fails to state claim upon which relief can be granted and further that there is a lack of jurisdiction over the subject matter as the termination of the Plaintiff's contract of employment is not a violation of United States Code or the United States Constitution.

IV.

Alleges that there is a lack of jurisdiction over the Defendants as the Summons and Complaint was never served personally upon them.

WHEREFORE, these answering Defendants demand the Plaintif's cause of action be dismissed and that they have their costs and disbursements herein.

WINTER AND NELSON, LTD.
/s/ James F. Nelson
Attorneys for Defendants
Old Pope County Bank Building
Glenwood, Minnesota 56334
Phone 634-4584

CALLAGHAN AND NELSON
/s/ Norvell C. Callaghan
Attorneys for Defendants
Old Pope County Bank Building
Glenwood, Minnesota 56334
Phone 634-4581

ANSWER

Civil Action File No.

6-73-158 Civil

Defendants for their answer to the complaint of the Plaintiff states and alleges as follows, to-wit:

I.

Admits paragraphs II, III, IV, V, VII, VIII, X, XI, XII, XIII, XIV, XV, and XVI of the Plaintiff's complaint.

II.

Except as herein specifically qualified, admitted or otherwise answered, denies generally each and every other allegation, matter and thing in said Complaint contained and each and every part thereof.

III.

Alleges that the complaint fails to state claim upon which relief can be granted and further that there is a lack of jurisdiction over the subject matter as the termination of the Plaintiff's contract of employment is not a violation of United States Code or the United States Constitution.

WHEREFORE, these answering Defendants demand the

Plaintiff's cause of action be dismissed and that they have their costs and disbursements herein.

WINTER AND NELSON, LTD.
/s/ James F. Nelson
Attorneys for Defendants
Old Pope County Bank Building
Glenwood, Minnesota 56334
Phone 634-4584

CALLAGHAN AND NELSON
/s/ Norvell C. Callaghan
Attorneys for Defendants
Glenwood, Minnesota 56334
Phone 634-4581

THE U.S. CONSTITUTION

AMENDMENT I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT IX.

The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people.

AMENDMENT XIV.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress,

the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropirate legislation, the provisions of this article.

125.12 Employment; contracts, termination

Subdivision 1. Teacher defined. A superintendent, principal, supervisor, and classroom teacher and any other professional employee required to hold certificate from the state department shall be deemed to be a "teacher" within the meaning of this section.

Subd. 2 Hiring, dismissing. School boards shall hire or dismiss teachers at duly called meetings. Where a husband and wife, brother and sister, or two brothers or sisters, constitute a quorum, no contract employing a teacher shall be made or authorized except upon the unanimous vote of the full board. No teacher related by blood or marriage, within the fourth degree, computed by the civil law, to a board member shall be employed except by a unanimous vote of the full board. The employment shall be by written contract, signed by the teacher and by the chairman and clerk. Contracts for teaching or supervision of teaching can be made only with qualified teachers. Such contract shall specify the wages per year and the general assignment of the teacher. No teacher shall be required to reside within the employing school district as a condition to teaching employment or continued teaching employment.

Subd. 3. Probationary period. The first and second consecutive years of a teacher's first teaching experience in Minnesota in a single school dstrict shall be deemed to be a probationary period of employment, and after completion thereof, the probationary period in each school district in which he is thereafter employed shall be one year. A teacher who has complied with the then applicable probationary requirements in a school district prior to July 1, 1967, shall not be required to serve a new probationary period in the said district subsequent thereto. During the probationary

period any annual contract with any teacher may or may not be renewed as the school board shall see fit; provided, however, that the school board shall give any such teacher whose contract it declines to renew for the following school year written notice to that effect before April 1. If the teacher requests reasons for any nonrenewal of a teaching contract, the school board shall give the teacher its reason in writing, including a statement that appropriate supervision was furnished describing the nature and the extent of such supervision furnished the teacher during his employment by the board, within ten days after receiving such request. The school board may, after a hearing held upon due notice, discharge a teacher during the probationary period for cause, effective immediately, under Minnesota Statutes, Section 123.14, Subdivision 4, or Section 123.35, Subdivision 5.

Subd. 4. Termination of contract after probationary period. A teacher who has completed his probationary period in any school district, and who has not been discharged or advised of a refusal to renew his contract pursuant to subdivision 3, shall have a continuing contract with such district. Thereafter, the teacher's contract shall remain in full force and effect, except as modified by mutual consent of the board and the teacher, until terminated by a majority roll call vote of the full membership of the board, upon one of the grounds specified in subdivision 6, or until the teacher is discharged pursuant to subdvision 8, or by the written resignation of the teacher submitted prior to April 1; provided, however, that if an agreement as to the terms and conditions of employment for the succeeding school year has not been adopted pursuant to the provisions of sections 179.61 to 179.77 prior to March 1, the teacher's

right of resignation shall be extended to the 30th calendar day following the adoption of said contract in compliance with section 179.70, subdivision 2. Such written resignation by the teacher shall be effective as of June 30 if submitted prior to that date or, if submitted thereafter, shall be effective August 15, and the teachers' right of resignation for the school year then beginning shall cease on August 15. Before a teacher's contract is terminated by the board, the board shall notify the teacher in writing and state its ground for the proposed termination in reasonable detail together with a statement that the teacher may make a written request for a hearing before the board within 14 days after receipt of such notification. Within 14 days after receipt of this notification the teacher may make a written request for a hearing before the board and it shall be granted before final action is taken. If no hearing is requested within such period, it shall be deemed acquiescence by the teacher to the board's action. Such termination shall take effect at the close of the school year in which the contract is terminated in the manner aforesaid. Such contract may be terminated at any time by mutual consent of the board and the teacher and this section shall not affect the powers of a board to suspend, discharge, or demote a teacher under and pursuant to other provisions of law.

Subd. 5. Retirement. Notwithstanding the foregoing provisions, a board may provide by rule that its teachers shall be retired at age 65.

Subd. 6. Grounds for termination. A continuing contract may be terminated effective at the close of the school year, upon any of the following grounds:

(a) Inefficiency;

(b) Neglect of duty, or persistent violation of school laws, rules, regulations or directives;

(c) Conduct unbecoming a teacher which materially impairs his educational effectiveness;

(d) Other good and sufficient grounds rendering the teacher unfit to perform his duties; or

(e) Discontinuance of position, lack of pupils, or merger of classes caused by consolidation of districts or otherwise, provided that in the event of a consolidation of school districts, continuing-contract teachers on the staffs of participating districts shall be retained on the staff of the consolidated district in positions for which they are qualified under state law and state board regulations to the extent that such positions exist.

A contract shall not be terminated upon one of the grounds specified in clauses (a), (b), (c), or (d), unless the teacher shall have failed to correct the deficiency after being given written notice of the specific items of complaint and reasonable time within which to remedy them.

All evaluations and files generated within a school district relating to each individual teacher shall be available during regular school business hours to each individual teacher upon his written request. The teacher shall have the right to reproduce any of the contents of the files at the teacher's expense and to submit for inclusion in the file written information in response to any material contained therein; provided, however, a school district may destroy such files as provided by law.

Subd. 7. Suspension and leave of absence for health reasons. Affliction with active tuberculosis or other communicable disease, mental illness, drug or alcoholic addic-

tion, or other serious incapacity shall be grounds for temporary suspension and leave of absence while the teacher is suffering from such disability. Unless the teacher consents, such action shall be taken only upon evidence that suspension is required from a physician who has examined the teacher. The physician shall be competent in the field involved and shall be selected by the teacher from a list of three provided by the school board, and the examination shall be at the expense of the school district. A copy of the report of the physician shall be furnished the teacher upon request. If the teacher fails to submit to the examination within the prescribed time, the board may discharge him, effective immediately. In the event of mental illness, if the teacher submits to such an examination and the examining physician's or psychiatrist's statement is unacceptable to the teacher or the board, a panel of three physicians or psychiatrists shall be selected to examine the teacher at the board's expense. The board and the teacher shall each select a member of this panel, and these two members shall select a third member. The panel shall examine the teacher and submit a statement of its findings and conclusions to the board. Upon receipt and consideration of the statement from the panel the board may suspend the teacher. The board shall notify the teacher in writing of such suspension and the reasons therefor. During the leave of absence the teacher shall be paid sick leave benefits by the district up to the amount of his unused accumulated sick leave, and after it is exhausted, the district may in its discretion pay him additional benefits. The teacher shall be reinstated to his position upon evidence from such a physician that he has made sufficient recovery and is capable of resuming performance of his duties in a proper manner. In the event that the teacher does not qualify for reinstatement within twelve months after the date of suspension, his continuing disability may be a ground for discharge under subdivision 8.

Subd. 8. Immediate discharge. A school board may discharge a continuing-contract teacher, effective immediately, upon any of the following grounds:

(a) Immoral conduct, insubordination, or conviction of a felony.

(b) Conduct unbecoming a teacher which requires the immediate removal of the teacher from his classroom or other duties;

(c) Failure without justifiable cause to teach without first securing the written release of the school board;

(d) Gross inefficiency which the teacher has failed to correct after reasonable written notice;

(e) Willful neglect of duty; or

(f) Continuing physical or mental disability subsequent to a twelve months leave of absence and inability to qualify for reinstatement in accordance with subdivision 7.

Prior to discharging a teacher the board shall notify the teacher in writing and state its ground for the proposed discharge in reasonable detail. Within ten days after receipt of this notification the teacher may make a written request for a hearing before the board and it shall be granted before final action is taken. The board may, however, suspend a teacher with pay pending the conclusion of such hearing and determination of the issues raised therein after charges have been filed which constitute ground for discharge.

Subd. 9. Hearing procedures. Any hearing held pur-

suant to Laws 1967 chapter 890 shall be held upon appropriate and timely notice to the teacher, and shall be private or public at the discretion of the teacher. At the hearing, the board and the teacher may each be represented by counsel at its or his own expense, and such counsel may examine and cross-examine witnesses and present arguments. The board shall first present evidence to sustain the grounds for termination or discharge and then receive evidence presented by the teacher. Each party may then present rebuttal evidence. Dismissal of the teacher shall be based upon substantial and competent evidence in the record. All witnesses shall be sworn upon oath administered by the presiding officer of the board. The clerk of the board shall issue subpoenas for witnesses or the production of records pertinent to the grounds upon the request of either the board or the teacher. The board shall employ a court reporter to record the proceedings at the hearing, and either party may obtain a transcript thereof at its own expense.

Subd. 10. Decision. After the hearing, the board shall issue a written decision and order. If the board orders termination of a continuing contract or discharge of a teacher, its decision shall include findings of fact based upon competent evidence in the record and shall be served on the teacher, accompanied by an order of termination or discharge, prior to April 1 in the case of a contract termination, or within ten days after conclusion of the hearing in the case of a discharge. If the decision of the board or of a reviewing court is favorable to the teacher, the proceedings shall be dismissed and the decision entered in the board minutes, and all references to such proceedings shall be excluded from the teacher's record file.

Subd. 11. Judicial review. The pendency of judicial proceedings shall not be ground for postponement of the effective date of the school board's order, but if judicial review eventuates in reinstatement of the teacher, the board shall pay the teacher all compensation withheld as a result of the termination or dismissal order.

Subd. 13. Exception. This section shall not apply to any district in a city of the first class.

Amended by Laws 1963, c. 450, § 1; Laws 1967, c. 890, § 1, eff. July 1, 1967; Laws 1969, c. 781, § 1, eff. May 28, 1969; Laws 1971, c. 253, § 1, eff. May 12, 1971; Laws 1971, c. 743, § 1, eff. July 1, 1971; Laws 1973, c. 128, § 1.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
SIXTH DIVISION

EDWARD KECKEISEN,

Plaintiff,

vs.

INDEPENDENT SCHOOL DISTRICT 612, Glenwood, Minnesota; RICHARD KAUS, Chairman of School Board, Independent School District 612; JOANNE SOLMONSON, Clerk of School Board, Independent School District 612; LeROY KNUTSON, Member of School Board, Independent School District 612; ROBERT ROBARDS, Member of School Board, Independent School District 612; RICHARD THOMPSON, Member of School Board, Independent School District 612; ELAINE BENNETT, Member of School Board, Independent School District 612; JERRY LEEDAHL, Member of School Board, Independent School District 612,

Defendants.

ORDER OF DISMISSAL

6-73-Civil-158

WILLIAM B. KORSTAD and BRUCE A. OLANDER, Minneapolis, Minnesota, attorneys for plaintiff.

JAMES F. NELSON, Winter and Nelson, Ltd., Glenwood, Minnesota, and NORVELL C. CALLAGHAN, Callaghan and Nelson, Glenwood, Minnesota, attorneys for defendants.

PETER S. POPOVICH, Peterson, Popovich, Knutson & Flynn, St. Paul, Minnesota, amicus curiae on behalf of THE MINNESOTA SCHOOL BOARDS ASSOCIATION.

For consideration is defendant's motion to dismiss this civil rights action for injunctive and money damages brought by plaintiff School Principal against the school district and its board members. The issues have been fully briefed and orally argued.

The Court is satisfied that a cause of action is not stated against either the school board or the members and that even if one were stated the school board's conflict of interest policy governing employment of husbands and wives is a permissible one under constitutional standards and the plaintiff received a full and fair hearing and the record adequately supports the action of the school board in terminating plaintiff's services.

The action is DISMISSED.

Dated: March 12, 1974.

/s/ EDWARD J. DEVITT
Chief Judge
United States District Court

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 74-1326

EDWARD KECKEISEN,
Appellant,

vs.

INDEPENDENT SCHOOL DISTRICT 612, et al.,
Appellees.

Appeal from the United States District Court for the District of Minnesota.

Submitted: November 13, 1974.
Filed: February 10, 1975.

Before VAN OOSTERHOUT, Senior Circuit Judge, HEANEY, Circuit Judge, and MEREDITH, Chief District Judge.*

MEREDITH, Chief District Judge.

This is a civil rights action sought to be maintained under 42 U.S.C. §§ 1983 and 1985, in which appellant, Edward Keckeisen, seeks a permanent injunction restraining

*JAMES H. MEREDITH, Chief Judge, Eastern District of Missouri, sitting by designation.

defendants from terminating his employment contract, reinstatement as principal of the Glenwood High School, and punitive damages. Appellant's employment contract was terminated pursuant to the School Board's policy, which provides in pertinent part:

> It shall be the policy of the Board of Education not to employ the combination of husband and wife in the schools of the District where a conflict of interest could arise; said policy is to apply to the following:
>
> 1. Administrator - Teacher relationship
>
> 2. Husband and Wife combination in the same building
>
> 3. All other situations where a conflict of interest occurs.
>
> Where the employment of a husband and wife in Independent School District 612 causes a conflict of interest to occur or should one of the above conditions arise, that then either the husband or the wife shall resign. In the event neither the husband or the wife resigns within 10 days of notification of the conflict of interest or the occurrence of the above conditions, that then and in that event the Board of Education shall determine which position should be terminated according to statute.

Edward Keckeisen, the principal of Glenwood High School, was married to Lois Korbel, a physical education teacher at the school, in December 1972. Both were tenured teachers, having been employed three and six years, respectively, at their positions. The School Board's policy, the constitutionality of which is the subject of this appeal,

was officially adopted by the Board on June 12, 1972, notice of its adoption being sent to all faculty members in the school district. The record indicates that the Board was apprised of the intention of Keckeisen and Korbel to marry at the time that it officially adopted the policy in question, but there is no allegation or evidence that the policy was invidiously tailored to fit the circumstances of their prospective marriage. In the record of the hearing that was held before the School Board on March 29, 1973, there was testimony by the Superintendent of Schools and past board members, dating back to 1945, that there had been a policy in the district not to hire married couples in the school system. There was testimony that on several occasions persons had not been hired, or that they had been asked to resign, because of the fact that they were married to someone who was already employed by the school district. It was also pointed out in that hearing that the district does use husbands or wives of faculty members as substitute teachers from time to time. This was explained as being necessary due to the small size of the community, and the scarcity of qualified persons who can be available on short notice. It is clear to the court that the problems of substitutes and those of permanent staff members are quite different and are distinguishable for purposes of the issues to be decided here.

Upon the marriage of Keckeisen and Korbel, the School Board notified the Keckeisens of the applicability of the policy to them, and in March 1973 a public hearing was held to determine whether the Keckeisens, or either of them, should be terminated in their employment. By resolution of the School Board, appellant was notified, on March 29, 1973, that his employment contract would not be renewed

beyond the end of the school year, and, in fact, appellant has not been employed by appellee since the completion of the 1973 academic year.

Appellant then brought the matter before the federal district court, claiming that his Ninth Amendment right to privacy and Fourteenth Amendment right to equal protection of the laws had been violated. Chief Judge Devitt dismissed the matter, holding in a brief opinion that a cause of action was not stated, and, further, "that even if one were stated the school board's conflict of interest policy * * * is a permissible one under constitutional standards * * *."

In considering the constitutionality of appellees' policy, and particularly its application to Edward Keckeisen, it is instructive to note that appellees' alternatives were rather strictly limited by the setting of the events. Glenwood is a small town in which there is only one high school. There is an elementary school in Glenwood, but neither of the Keckeisens was certified, as required by Minnesota law, to teach at the elementary level; and the position of principal of the elementary school was filled by a tenured teacher. It was not possible, therefore, to transfer either of the Keckeisens to another school within the district, which would have mitigated the severity of the result reached purusant to the Board's policy.

Jurisdiction

Appellees contend that the matter is not properly one of federal cognizance because appellant has not exhausted the remedies provided by Minnesota law and because appellees are not "persons" within the import of 42 U.S.C. §§ 1983 and 1985. This court finds, however, that appellant has properly stated a cause of action under 42 U.S.C. § 1983.

Although the states are given immunity by the Eleventh Amendment from the prosecution of civil claims, individuals and associations acting under color of state law are not immune to the sanctions of the Civil Rights Act and may be sued, unless it is clear to the court that the claim is actually a ruse by which personal jurisdiction over the state is sought to be exercised. *See Witner v. Davis,* 410 F.2d 24 (9th Cir. 1969) (action dismissed as to state and college, but allowed to proceed against board of trustees); *Porcelli v. Titus,* 302 F. Supp. 726, 730 (D. N.J. 1969); *aff'd,* 431 F.2d 1254 (3d Cir. 1970), *cert. denied,* 402 U.S. 944 (1971); *Miller v. Parsons,* 313 F. Supp. 1150 (M.D. Pa. 1970). *Cf. Board of Trustees of Arkansas A & M College v. Davis,* 396 F.2d 730 (8th Cir. 1968), *cert. denied,* 393 U.S. 962 (1968). Likewise, municipal corporations were not intended to be included as "persons" under § 1983, as appellees point out, but it would defeat the central intention of the Civil Rights Act to disallow actions against individuals employed by municipal corporations. Such is the holding of the Supreme Court in *Monroe v. Pape,* 365 U.S. 167 (1961), where it was held that individual police officers, but not the city itself, were subject to the sanctions of § 1983. This court, in affirming the district court in *Brenden v. Independent School District 742,* 477 F.2d 1292 (8th Cir. 1973), found school districts to be within the meaning of "persons" for the purposes of § 1983.

As to whether the present action is barred by appellant's decision not to pursue the matter in the state courts of Minnesota, it must be understood that appellant has alleged the violation of his federal constitutional rights. Appellees miss the mark entirely with their contention that school boards are vested with discretionary powers that

should not be subjected to judicial scrutiny, for what is involved in the case at bar is not merely the wisdom of a school board's decision to terminate the services of a teacher, as in *Scheelhaase v. Woodbury Central Community School District*, 488 F.2d 237 (8th Cir. 1973). At issue in this case is the constitutionality of a policy of terminating teachers under certain circumstances because they are married. This is not, then, a simple case of contract law, but a case arising under the federal Constitution.[1]

As the Supreme Court stated in *McNeese v. Board of Education*, 373 U.S. 668, 672 (1963):

> We would defeat those purposes [of 42 U.S.C. 1983] if we held that assertion of a federal claim in a federal court must await an attempt to vindicate the same claim in a state court. The First Congress created federal courts as the chief—though not always the exclusive—tribunals for enforcement of federal rights.

See also Monroe v. Pape, supra.

The Constitutional Claim

In *Loving v. Virginia*, 388 U.S. 1, 12 (1967), the Supreme Court held that:

> The freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men.

[1]In *Scheelhaase*, on which appellees rely heavily in this regard, this court stated: "* * * in the absence of a tenure statute a local school board has the right to decline to employ or to re-employ any teacher for any reason or for no reason as long as such a decision is not violative of a specific constitutional right." 488 F.2d at 242. Clearly, the present case is inapposite *Scheelhaase* in that *Scheelhaase* involved the non-constitutional right to keep one's job, while the constitutional right to marriage is involved here.

The case at bar is unlike *Loving* in a signally important respect, however. The policy in question here does not deny to people the right to marry; it only prohibits the employment of married couples in administrator-teacher situations.[2] The stated purpose of the rule is a laudatory one: preventing conflicts of interest and favoritism. What we have before us then is the state's interest in providing good education for its children—and we have that interest fully and directly before us because conflicts of interest in the administration of education are clearly subversive of the state's interest—and, on the other hand, a somewhat attenuated claim involving the right to marry. Were the right to marriage claim not so attenuated by the fact that marriage itself is not the subject of the School Board's policy—i.e., were the right more directly involved—then we should perhaps, reach a different result. Under the facts of this case, however, we are constrained to uphold the decision of the district court.

It is important to note that the record gives no indication that appellant's performance as principal of the high school was in any way unsatisfactory from the time of his marriage through the end of the school year. We are convinced that Keckeisen was, in fact, fair-minded in his administration of the school, but the policy of the School Board is quite naturally concerned not only with the actual administration of the school, but also with the effect of an apparently prejudiced arrangement on the morale of the other teachers. To put the matter more simply, the mere existence of the husband-wife/administrator-teacher situation

[2]The portion of the School Board's policy dealing with the employment of husband-wife teams in the same building, where they are not in the administrator-teacher relationship, is not challenged on this appeal and is not affected by our holding in this case.

is bound to have a deleterious effect on the morale of the faculty. We have no doubt that in many cases where husbands and wives are employed in supervisor-supervisee capacities, the married couple make an exemplary effort to maintain fairness, but we cannot say that a policy based on the assumption that married couples are susceptible to the natural prejudices of their relationships is irrational, arbitrary or capricious. There was testimony at the school board hearing that the policy was implemented to avoid situations where a conflict of interest was likely to arise. The superintendent of the district testified that where a teacher is married to an administrator, under whose supervisory control he or she is working, there is a strong possibility of conflicts of interest becoming a problem in several areas. The superintendent of a neighboring district, called as an expert witness, concurred in this opinion. Such problem areas would include: evaluation of the teacher's performance by the administrator, disciplinary problems with students in the teacher's classes where the administrator might be called upon to decide a dispute between student and teacher, the disciplining of teachers themselves, the assignment of classrooms and extracurricular duties, recommendations for the purchase of supplies and equipment, and the assignment of school aids. There was testimony that the situation could, in light of the above-mentioned areas where a conflict could arise, create a morale problem among the other members of the faculty under the control of the administrator in question. The superintendent testified that there was some competition among faculty members in the areas of classroom assignments, extra duties, requisitioning supplies, and the assignment of school aids.

In light of these considerations, the court cannot say that the Board was clearly wrong in attempting to avoid conflicts before they arose. With so many areas where a conflict could occur, there is a strong possibility that an administrator, no matter how careful he might be, could unintentionally let his judgment be swayed by his close relationship with one of the teachers. It also could place the administrator in the position of having to defend his actions where normally he would not.

This court does not feel that where such definite possibilities of conflict of interest exist, the Board should be placed under a constitutional burden of having to wait until a conflict of interest becomes a problem situation before it can take any action. The law should not block legitimate measures taken to anticipate problems and avert them.

It must be noted that appellant did not offer any evidence at the hearing and he has failed to inform the court of any possible alternatives by which appellees might have served the state's interests in eliminating conflicts of interest. Such alternatives are by no means inconceivable, but in the absence of any showing as to what the School Board might have done short of terminating appellant, the court must be satisfied that no such alternatives exist. Had appellant showed some reasonable alternatives of accomplishing the same result, this court might have found the incidental burden on the right to marriage to be, in balance, greater than the burden on the state.

Affirmed.

A true copy.

Attest:

CLERK, U. S. COURT OF APPEALS,
EIGHTH CIRCUIT.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

September Term, 1974
74-1326

EDWARD KECKEISEN,

Appellant,

vs.

INDEPENDENT SCHOOL DISTRICT 612, GLENWOOD, MINNESOTA, et al.,

Appellees.

Appeal from the United States District Court
for the District of Minnesota

Petition of appellant for rehearing filed in this cause having been considered, it is now here ordered by this Court that the same be, and it is hereby, denied.

February 28, 1975

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

No. Civ. 6-73-158

EDWARD KECKEISEN,

Plaintiff,

vs.

INDEPENDENT SCHOOL DISTRICT 612, et al.,

Defendants.

You are hereby notified that in the above entitled case, on the 13th day of March, 1975, filed Cert. Copy of Judgment of U. S. Court of Appeals For the Eighth Circuit dated February 10, 1975 affirming the judgment of the District Court and taxing costs in favor of Appellees of printing 10 copies of Appellees' Brief at $215.64, being total costs of Appellees for recovery from Appellant in the U. S. District Court.

Filed and entered Judgment pursuant to Mandate.
Docketed Judgment.

HARRY A. SIEBEN

Clerk

By /s/ BERNADINE L. BROWN
Deputy Clerk

To: William B. Korstad
Bruce A. Olander
Korstad and Olander
1214 Title Insurance Building
Minneapolis, Minnesota 55401

James F. Nelson
Winter and Nelson, Ltd.
Old Pope County Bank Bldg.
Glenwood, Minnesota 56334

Norvell C. Callaghan
Callaghan and Nelson
Old Pope County Bldg.
Glenwood, Minnesota 56334

Peter S. Popovich
Peterson, Popovich, Knutson & Flynn
314 Minnesota Bldg.
St. Paul, Minnesota 55101

IN THE

Supreme Court of the United States

October Term, 1974

No. 74-1503

EDWARD KECKEISEN,

Petitioner,

vs.

INDEPENDENT SCHOOL DISTRICT 612, Glenwood, Minnesota; RICHARD KAUS, Chairman of School Board, Independent School District 612; JOANNE SOLMONSON, Clerk of School Board, Independent School District 612; LEROY KNUTSON, Member of School Board, Independent School District 612; ROBERT ROBARDS, Member of School Board, Independent School District 612; RICHARD THOMPSON, Member of School Board, Independent School District 612; ELAINE BENNETT, Member of School Board, Independent School District 612; JERRY LEEDAHL, Member of School Board, Independent School District 612.

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

BRIEF IN OPPOSITION

JAMES F. NELSON
WINTER, NELSON & GROTH
NORVELL C. CALLAGHAN
CALLAGHAN, NELSON & OBENLAND
Attorneys for Respondents
Glenwood, Minnesota 56334

333-3539 Hayward Legal Publishing Co., 501 Park Ave., Mpls., Mn. 55415 333-3530

TABLE OF CONTENTS

	Page
Issue	1
Respondents' Appendix	2
Statement of the Case	2
Reply to Petitioner's Reasons	3
Conclusion	5

APPENDIX INDEX

Memorandum and Order Denying Preliminary Injunction A-1

TABLE OF AUTHORITIES

Loving v. Commonwealth of Virginia, 388 U.S. 1, 87 S.Ct. 1817 (1967) 3

Tinker et al v. Des Moines School District et al, 89 S.Ct. 733, 393 U.S. 503 (1969) 4

Statutes:

Sec. 125.12, Subd. 6, Minnesota Statutes 5

Sec. 125.12, Subd. 11, Minnesota Statutes 5

IN THE

Supreme Court of the United States

EDWARD KECKEISEN,

Petitioner,

vs.

INDEPENDENT SCHOOL DISTRICT 612, Glenwood, Minnesota; RICHARD KAUS, Chairman of School Board, Independent School District 612; JOANNE SOLMONSON, Clerk of School Board, Independent School District 612; LEROY KNUTSON, Member of School Board, Independent School District 612; ROBERT ROBARDS, Member of School Board, Independent School District 612; RICHARD THOMPSON, Member of School Board, Independent School District 612; ELAINE BENNETT, Member of School Board, Independent School District 612; JERRY LEEDAHL, Member of School Board, Independent School District 612.

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

---

BRIEF IN OPPOSITION

ISSUE

The "Issue" as stated by petitioner is not acceptable in that it ignores and misstates undisputed evidence. The glaring error therein is the clause "prohibiting marriage between an administrator and a physical education teacher."

Marriage may act as a bar to employment only under strictly limited circumstances involving conflict of interest.

We state the issue as:

Is a School District regulation constitutionally permissible if it proscribes marriage in an administrator-teacher relationship causing a conflict of interest?

The Circuit Court said "YES".

RESPONDENTS' APPENDIX

At the end of this brief we print a supplementary Appendix. The matter first came before The Honorable Edward J. Devitt in District Court on a motion by Petitioner for a Temporary Injunction forbidding termination of petitioner's employment during the pendency of this action. The opinion of Judge Devitt is believed to be helpful and his Order is set forth fully in the Appendix.

As to Petitioner's Appendix the Complaint is printed at A-11 thereof. At Paragraph XVI the School Board's Findings are made a part of such Complaint, but are not printed with the Complaint. These Findings, however, can be found at A-3 of Petitioner's Appendix and are believed to be a correct and uncontroverted statement of the factual basis of this case.

STATEMENT OF THE CASE

The statement as submitted by Petitioner in his Petition needs amplification as important factual matters were determined by the District Court and the Court of Appeals to which no reference is made. The narrative of facts set forth in the Court of Appeals opinion is at Page 36 of the Petitioner's Appendix and is deemed to be a correct statement. The Statement of Facts of petitioner is incorrect or incomplete and the Circuit Court's opinion is amplified in the following respects:

1. At the hearing before the School Board Petitioner introduced no witnesses. No complaint has been made as to the factual correctness of the School Board's Findings. By stipulation the parties adopted the School Board hearing transcript as the factual basis of the case and no oral testimony was taken in District Court, the case being submitted on the transcript.

2. As found by the Circuit Court and contrary to the Statement of Petitioner there was a policy in relation to marriage prior to the adoption of the present rule, A-37, line 8.

REPLY TO PETITIONER'S "REASONS FOR GRANTING THE WRIT"

Petitioner places a great reliance on *Loving v. Commonwealth of Virginia*, 388 U.S. 1, 87 S. Ct. 1817 (1967). This case involves violation of a state ban on interracial marriage. It was held that miscegenation statutes preventing marriages solely on the basis of race are not permissible under the fourteenth amendment. In our case, however, marriage is not prohibited but is only an incident in determination of conflict of interest. If petitioner married one not a teacher in the school district the questioned rule is not applicable. If petitioner married a teacher in the same district but their work was in separate buildings the rule does not apply. Even if the petitioner and his wife worked in the same building but on an equal basis, conflict of interest would be an open question. Here,

however, we have marriage between a principal who is the direct supervisor of the teacher. The supervisory duties of the principal over his wife would include, among others, the evaluation of the work and programs of his wife, handling of disciplinary problems relating to his wife, her pupils and their parents, staff morale problems, evaluation of performance of duties, recommending teacher aids, assignment to non-classroom duties, assignment of classrooms, recommendations as to the curriculum and general supervision (A6).

Tinker et al v. Des Moines Independent Community School District et al, 89 S. Ct. 733, 393 U.S. 503 (1969) cited by petitioner relates to the right of free speech under the first amendment and has no relevancy here.

Petitioner claims that the contract of the petitioner should not be terminated on the basis of "anticipatory problems" but certainly most rules, regulations and laws seek to prevent rather than to permit and then punish. As stated in the Circuit Court opinion "the law should not block legitimate measures taken to anticipate problems and avert them" (A43). Further, the Findings of the School Board specifically set forth that a staff morale problem had occurred by reason of the principal-teacher combination (A9) and that the proper performance of duties by the petitioner has become increasingly difficult because of his marital situation.

Again we must come back to the factual situation with which we are concerned here, only with circumstances where an administrator is in supervisory control of his wife where a conflict of interest does arise and cannot be remedied by changing buildings or duties. See A38.

Petitioner complains because the wife rather than the

husband should have been allowed to resign. There were compelling reasons for the Board to dismiss the principal in that he had less senority, and violation of school rules is more disturbing if the rules broken are by the person who is charged with the duty of their enforcement.

The letter of the petitioner stating that his wife would resign if judicial proceedings were determined unfavorably to him, was not a workable solution as dismissal under Minnesota Law is effective at the close of the school year in which the Findings were filed (July, 1973). *Section 125.12 Subd. 6, Minnesota Statutes.* It was not possible to await the conclusion of legal proceedings (now in progress for over two years). Replacement was necessary for the 1973-74 school year.

There is protection for the teacher in that Minnesota Law provides that while the pendency of judicial proceedings is not grounds for postponement of the school board's order of dismissal, yet, if judicial review eventuates in reinstatement, the school district is required to pay the teacher all compensation withheld as a result of the termination. *Section 125.12, Subd. 11, Minnesota Statutes.* For this purpose a principal in Minnesota is considered in the same category as a teacher.

CONCLUSION

The facts of this case indicate no discrimination on the basis of sex or marital status. The sole question is whether or not reasonable men might conclude that it is unwise for a school to employ a school principal whose teacher wife is under his direct supervision and control. The board herein after full and careful investigation through a public hearing has so concluded. We submit that this determina-

tion is well within the discretionary power of the board and without violation of any constitutional, statutory or civil rights of the petitioner.

Respectfully submitted,

WINTER, NELSON & GROTH, LTD.
CALLAGHAN, NELSON & OBENLAND
By: JAMES F. NELSON AND
NORVELL C. CALLAGHAN
/s/ NORVELL C. CALLAGHAN
Attorneys for Respondents

APPENDIX

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
SIXTH DIVISION

EDWARD KECKEISEN,

Plaintiff,

vs.

INDEPENDENT SCHOOL DISTRICT 612, Glenwood, Minnesota et al,

Defendants.

6-73-Civ-158

MEMORANDUM & ORDER DENYING
PRELIMINARY INJUNCTION

WILLIAM B. KORSTAD and BRUCE A. OLANDER, Attorneys for the Plaintiff.

JAMES F. NELSON, WINTER and NELSON, LTD., Glenwood, Minnesota, and NORVELL C. CALLAGHAN, CALLAGHAN AND NELSON, Glenwood, Minnesota, Attorneys for the Defendants.

Plaintiff school principal seeks a temporary restraining order enjoining Independent School District 612, Glenwood, Minnesota, from terminating his employment contract pursuant to its policy covering conflicts of interest in the employment of married couples. Plaintiff alleges violation of his Ninth and Fourteenth Amendment rights.

Jurisdiction is predicated upon the Civil Right Act, 28 U.S.C. §1343 and 42 U.S.C. §§1983 and 1985.

Plaintiff was hired as a secondary school principal by Independent School District 612 in 1970 and thereafter acquired tenure rights in accordance with M.S.A. §125.-12 (3). On June 12, 1972, the Board of Education of District 612 issued a written statement of policy, reflective of a previously existing unwritten policy, relative to the employment of spouses in conflict of interest situations, which reads:

> "Employment of married couples:
>
> It shall be the policy of the Board of Education not to employ the combination of husband and wife in the schools of the District where a conflict of interest could arise; said policy is to apply to the following:
>
> 1. Administrator—teacher relationship
>
> 2. Husband and wife combination in the same building
>
> 3. All other situations where a conflict of interest occurs
>
> Where the employment of a husband and wife in Independent School District 612 causes a conflict of interest to occur or should one of the above two conditions arise, that then either the husband or the wife shall resign. In the event neither the husband or the wife resigns within 10 days of notification of the conflict of interest or the occurrence of the above conditions that then and in that event the Board of Education shall determine which position should be terminated according to statute."

In December 1972, plaintiff married Lois Korbel, a physical education teacher employed in the secondary school of which plaintiff was principal. On January 12, 1973, the Board by its attorney notified plaintiffs of its married couples policy and requested his resignation. Plaintiff responded by letter on January 25, 1973, wherein he challenged the constitutionality of the married couples policy and indicated that neither he nor his wife intended to resign. However, he did state that should a court subsequently find the policy constitutional his wife preferred to resign.

Pursuant to M.S.A. §125.12 the School Board, on March 1, 1973, notified plaintiff that it proposed to terminate his contract. In accordance with the provisions of the aforementioned statute, plaintiff requested a public hearing before the Board. Such public hearing was held on March 29, 1973 wherein plaintiff was represented by his present counsel. By unanimous vote the Board made findings of fact and ordered the termination of plaintiff's contract effective at the close of the 1972-73 school year. The specific grounds for the contract termination were given as "persistent violation of school laws, rules, regulations or directives and more particularly policy of Independent School District 612 on employment of married couples." The School Board has hired a new principal and he has entered upon his duties preparatory to school opening this week.

Although plaintiff's motion is styled as one for a temporary restraining order, it is clear that the pertinent procedure does not differ functionally from that on application for a preliminary injunction where notice is given and an adversary hearing held. Wright and Miller, Feder-

al Practice and Procedure, §2951 (1973). Therefore, we construe the motion as one for a preliminary injunction.

Plaintiff has not made a strong showing that he would prevail on the merits. The School Board policy governing conflict of interest situations appears reasonable and not discriminatory toward married teachers. A reading of the pertinent cases does not persuade us that plaintiff has a reasonable probability of success at trial. But if the policy is found violative of constitutional principles, plaintiff will not be irreparably injured. By statute, M.S.A. 125.11, plaintiff is entitled to recover all compensation withheld.

The School Board would suffer irreparable injury if the relief is granted improvidently. It has already hired a new principal whom it must pay. Two principals could not function in the same job. Plaintiff has been dilatory in seeking equitable relief. He was notified of his termination in late March but the matter was not brought on for hearing till August 13 with last briefs filed on August 24. The status quo of the parties has changed significantly since March.

A complete state statutory procedure with interpretative judicial decisions is available for resolution of disputes of this kind involving Minnesota school boards and teachers. We give deference to the state court in matters of this kind and it is suggested that plaintiff may care to seek relief in accordance with state procedure.

Plaintiff's motion for an injunction is DENIED.

Dated: September 4, 1973.

/s/ EDWARD J. DEVITT
Chief Judge
United States District Court

Supreme Court, U. S.
FILED
JUN 30 1975

IN THE

Supreme Court of the United States

October Term, 1974

No. 74-1503

EDWARD KECKEISEN,

Petitioner,

vs.

INDEPENDENT SCHOOL DISTRICT 612, Glenwood, Minnesota; RICHARD KAUS, Chairman of School Board, Independent School District 612; JOANNE SOLMONSON, Clerk of School Board, Independent School District 612; LeROY KNUTSON, Member of School Board, Independent School District 612; ROBERT ROBARDS, Member of School Board, Independent School District 612; RICHARD THOMPSON. Member of School Board, Independent School District 612; ELAINE BENNETT, Member of School Board, Independent School District 612; JERRY LEEDAHL, Member of School Board, Independent School District 612,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

BRIEF AMICUS CURIAE ON BEHALF OF THE MINNESOTA SCHOOL BOARDS ASSOCIATION IN OPPOSITION TO PETITION FOR CERTIORARI

PETER S. POPOVICH of
Peterson, Popovich,
Knutson, & Flynn, P.A.
314 Minnesota Bldg.
St. Paul, MN 55101
612 - 222-5515
Attorney for Amicus Curiae
Minnesota School Board Association

224-7631 — Review Publishing Co., 287 E. 6th St., St. Paul, Minn. 55101 — 224-7631

TABLE OF CONTENTS

PAGE

Table of Authorities ii

Consent 2

Interest of Amicus Curiae 2

Argument:

The Decision of the United States Court of Appeals for the Eighth Circuit in This Case Is Not in Conflict With Applicable Decisions of This Court 3

A. The School Board Action Does Not Prohibit Marriage: *Loving vs. Virginia* Distinguished 3

B. A School Board May Reasonably Anticipate That Problems Will Inhere or Result From the Conflict of the Marital and the Supervisory Interests: *Tinker vs. Des Moines School District* Distinguished 7

C. The School Board Action Here Is Not Sex or Other Discrimination in Violation of Title VII, Nor Has Any Such Violation Been Alleged: *Griggs vs. Duke Power Company* Distinguished 10

Conclusion 12

TABLE OF CITATIONS

	PAGE
EEOC Decisions, No. 70-453, Case YBI 96-012, January 19, 1970, CCH Employment Practices Reporter §1250.40	11
Griggs vs. Duke Power Company, 401 U.S. 424, 91 S.Ct. 849, 28 L.Ed 2d 158 (1971)	3, 10, 11
Keckeisen vs. Independent School District 612, 509 F.2d 1062 (Eighth Circuit, 1975)	2, 5, 6, 9, 10
Loving vs. Commonwealth of Virginia, 388 U.S. 1, 87 S.Ct. 1817, 18 L.Ed 2d 1010 (1967)	3, 4, 5
Tinker vs. Des Moines Independent Community School District, 393 U.S. 503, 89 S. Ct. 733, 21 L.Ed 2d 731 (1969)	3, 7, 8, 9

IN THE

Supreme Court of the United States

October Term, 1974

No. 74-1503

EDWARD KECKEISEN,

Petitioner,

vs.

INDEPENDENT SCHOOL DISTRICT 612, Glenwood, Minnesota; RICHARD KAUS, Chairman of School Board, Independent School District 612; JOANNE SOLMONSON, Clerk of School Board, Independent School District 612; LeROY KNUTSON, Member of School Board, Independent School District 612; ROBERT ROBARDS, Member of School Board, Independent School District 612; RICHARD THOMPSON, Member of School Board, Independent School District 612; ELAINE BENNETT, Member of School Board, Independent School District 612; JERRY LEEDAHL, Member of School Board, Independent School District 612,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

BRIEF AMICUS CURIAE ON BEHALF OF THE MINNESOTA SCHOOL BOARDS ASSOCIATION IN OPPOSITION TO PETITION FOR CERTIORARI

CONSENT

Counsel for Amicus Curiae has obtained the consent to the filing of this brief in opposition to petitioner's writ of certiorari from counsel for the petitioner and the respondent.

INTEREST OF AMICUS CURIAE

The Minnesota School Boards Association represents approximately 435 school boards in Minnesota. The Association has an interest in the outcome of the case because the outcome may have significant ramifications on personnel policies, and school administration for all school boards in the state, and because to grant the relief sought would foster, in the words of the opinion of the Court of Appeals for the Eighth Circuit below,

> "conflicts of interest in the administration of education [which] are clearly subversive of the state's interest." 509 F.2d at 1065.

ARGUMENT

THE DECISION OF THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT IN THIS CASE IS NOT IN CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT.

Petitioner asserts only one reason why this Court should grant a writ of certiorari in this case: the United States Court of Appeals for the Eighth Circuit has decided federal questions of substance not in accord with previous decisions of this Court. This assertion is incorrect.

Petitioner cites only three cases in support of his assertion that the Eighth Circuit Court decision in this case is in conflict with decisions of this Court. The three cases are: *Loving vs. Commonwealth of Virginia*, 388 U.S. 1, 87 S.Ct. 1817, 18 L.Ed. 2d 1010 (1967); *Tinker vs. Des Moines Independent Community School District*, 393 U.S. 503, 89 S.Ct. 733, 21 L.Ed 2d 731 (1969); *Griggs vs. Duke Power Company*, 401 U.S. 424, 91 S.Ct. 849, 28 L. Ed 2d 158 (1971).

But, petitioner himself acknowledges by his discussion of the three cases their distinguishability from this case.

A. The School Board Action Does Not Prohibit Marriage: Loving vs. Virginia Distinguished.

Petitioner expressly concedes that this case is distinguishable from *Loving*.

> "In the case at hand, what we have is not a prohibition against marriage, as in the *Loving* case, ..." Petition, p. 10.

What petitioner fails to point out is that the distinctions between *Loving* and this case go far beyond the fact that

Loving involved the prohibition of marriage and this case does not. The opinion of this Court in *Loving* stated:

> "There can be no question but that Virginia's miscegenation statutes rest solely upon distinctions drawn according to race." 388 U.S. at 11, 87 S.Ct. at 1823, 18 L.Ed 2d at 1017.

This case does not involve distinctions drawn according to race. Further *amicus* is aware of no decision of this Court or any other Court which has held that a classification of the kind involved in this case is a suspect classification necessitating the strict scrutiny required of racial classifications such as the one at issue in *Loving*.

The opinion of this Court in *Loving* also pointed out that:

> "There is patently no legitimate overriding purpose independent of invidious racial discrimination which justifies this classification." 388 U.S. at 11, 87 S.Ct. at 1823, 18 L.Ed 2d at 1017.

and later in the same opinion pointed out again that:

> "To deny this fundamental freedom [of the right to marry] on so unsupportable a basis as the racial classifications embodied in these statutes, classifications so directly subversive of the principle of equality at the heart of the Fourteenth Amendment, is surely to deprive all the State's citizens of liberty without due process by law. The Fourteenth Amendment requires that the freedom of choice to marry not be restricted by invidious racial discriminations." 388 U.S. at 12, 87 S.Ct. 1824, 18 L.Ed 2d at 1018.

Contrast the absence of any legitimate purpose in *Loving* with the purpose of the policy involved in this case as described in the opinion for the Court of Appeals for the Eighth Circuit:

> "The case at bar is unlike *Loving* in a signally important respect, however. The policy in question here does not deny to people the right to marry; it only prohibits the employment of married couples in administrator-teacher situations. *The stated purpose of the rule is a laudatory one: preventing conflicts of interest and favoritism.* What we have before us then is the state's interest in providing good education for its children — and we have that interest fully and directly before us because *conflicts of interest in the administration of education are clearly subversive of the state's interest* — and, on the other hand, a somewhat attenuated claim involving the right to marry. . . . ." *Keckeisen vs. Independent School District 612,* 509 F.2d 1062 (1975), at 1065, footnote omitted; emphasis added.

Petitioner also overstates the effect of the application in this case of the policy at issue when he states at page 10 of his petition:

> ". . . we have a situation where if two people are teachers in a school district and want to marry, the regulation in the instant case does not prohibit that marriage but requires that one of the parties resign his or her position in the school district."

This case does not involve two classroom teachers working independently of each other, but rather a school principal

with direct and immediate supervisory responsibility over his spouse.

The opinion of the Court of Appeals for the Eighth Circuit below recognized this very important distinction in footnote 2:

> "The portion of the School Board's policy dealing with the employment of husband-wife teams in the same building, where they are not in the administration-teacher relationship, is not challenged on this appeal and is not affected by our holding in this case." 509 F.2d at 1065.

Petitioner also asserts without citation of authority that the school district's action in this case is an unconstitutional invasion of privacy. But petitioner's argument supports rather than negates the wisdom and reasonableness of such a policy for it is the very intimacy of the marital relation which leads to the assertion of the right to privacy and gives rise to conflict when the interest in the marital relation is superimposed on and identified with the supervisory employment interest in the school context.

Viewed in this light, the conflict of interest policy at issue in this case is analogous to the kind of conflict of interest prohibitions common to our legal and ethical system — for example, the common prohibition that a public official may not participate in his official capacity in a transaction in which he has a personal interest.

If the personal interest is so special and intimate that it ascends to the arguably constitutionally protected zone of privacy, there is all the more reason to recognize a conflict

when that interest runs head on into the supervisory interest. Nor can the conflict in this case be dealt with by internal transfers and reassignments because in this small school district there is no possibility for transfer of assignment of either party to avoid the necessary and essential supervisory function of the only school administrator with direct and immediate supervisory responsibilities over the person who holds the position held by petitioner's spouse.

B. A School Board May Reasonably Anticipate that Problems Will Inhere or Result from the Conflict of the Marital and the Supervisory Interests: Tinker vs. Des Moines School District Distinguished.

Petitioner expressly concedes also that the second of the three cases he relies on in support of his petition is distinguishable.

> ". . . this case is distinguishable from dealing with the First Amendment freedoms of students [which was the issue in *Tinker*]." Petitioner, p. 10.

Petitioner asserts that since *Tinker* speaks of the need for material and substantial disruption to justify student suspension that the same standard of disruption must be required in this case. This argument is defective. *Tinker* does not require "some showing of disruption" to justify student suspensions.

The opinion of the Court, in *Tinker*, states:

> ". . . the record fails to yield evidence that the school authorities *had reason to anticipate* that the wearing of armbands would substantially interfere with the work of the school or impinge upon the rights of other students." 393 U.S. at 509, 89 S.Ct. at 738, 21 L.Ed 2d at 742; emphasis added.

and again:

> ". . . the record does not demonstrate any facts which might *reasonably have led school authorities to forecast* substantial disruption of or material interference with school activities, and no disturbances or disorders on the school premises in fact occurred." 393 U.S. at 514, 89 S.Ct. at 740, 21 L.Ed 2d at 742; emphasis added.

These two passages indicate that school authorities may take action in reasonable anticipation of disruption without waiting for the disruption to occur.

Indeed, this is the only reasonable reading of *Tinker*, for to suggest that there must be a showing of disruption is to say that school authorities could take no action against a student known to have quietly entered class, without disrupting anyone, but with a bomb in his brief case.

Assuming without conceding that *Tinker* is somehow analogous to this case, if the school board in this case could have reasonably anticipated that the conflict of the marital interest and the supervisory interest would be disruptive of the educational process, then its action would not be forbidden by analogy to any of the principles of *Tinker*.

The record is replete with examples of and expert testimony of the disruptive effects of this kind of conflict of interest. In the opinion for the Eighth Circuit below, some of the disruptive problem areas are noted:

> "Such problem areas would include: evaluation of the teacher's performance by the administrator, disciplinary problems with students in the teacher's classes where the administrator might be called upon to decide a dispute between student and teacher, the disciplining of teachers

> themselves, the assignment of classrooms and extra-curricular duties, recommendations for the purchase of supplies and equipment, and the assignment of school aides. There was testimony that the situation could, in light of the above-mentioned areas where a conflict could arise, create a morale problem among the other members of the faculty under the control of the administrator in question. The superintendent testified that there was some competition among faculty members in the areas of classroom assignments, extra duties, requisitioning supplies, and the assignment of school aides.
>
> In light of these considerations, the court cannot say that the Board was clearly wrong in attempting to avoid conflicts before they arose. With so many areas where a conflict could occur, there is a strong possibility that an administrator, no matter how careful he might be, could unintentionally let his judgment be swayed by his close relationship with one of the teachers. It also could place the administrator in the position of having to defend his actions where normally he would not.
>
> This court does not feel that where such definitie possibilities of conflict of interest exist, the Board should be placed under a constitutional burden of having to wait until a conflict of interest becomes a problem situation before it can take any action. The law should not block legitimate measures taken to anticipate problems and avert them." 509 F.2d at 1066.

Thus *Tinker*, if it is apposite at all, is supportive of the school board action in this case.

In at least one other sense this case differs from *Tinker*. While *Tinker* required a reasonable anticipation of disruption,

the policy in this case against husband and wife as supervisor-supervisee recognizes that the marital relation and the supervisory relation are or may be inherently inimical to each other, without any overt disruptive expression.

As the opinion for the Court of Appeals of the Eighth Circuit, below stated:

> "To put the matter more simply, the mere existence of the husband-wife/administrator-teacher situation is bound to have a deleterious effect on the morale of the faculty." 509 F.2d at 1066.

C. The School Board Action Here Is Not Sex or Other Discrimination in Violation of Title VII, Nor Has Any Such Violation Been Alleged: Griggs vs. Duke Power Company Distinguished.

Petitioner next asserts that the conflict of interest policy in this case is analogous to the education and testing requirements which were struck down by this Court in *Griggs vs. Duke Power Company*, 401 U.S. 424, 91 S.Ct. 849, 28 L.Ed 2d 158 (1971).

In that case, the Court stated that under Title VII of the Civil Rights Act of 1964:

> ". . . practices, procedures, or tests neutral on their face, and ever neutral in terms of intent, cannot be maintained if they operate to 'freeze' the status quo of prior discriminatory employment practices. . . .
>
> * * * * *
>
> . . . The Act proscribes not only overt discrimination but also practices that are fair in form, but discriminatory in operation." 401 U.S. at 430, 431, 91 S.Ct. 849 at 853, 28 L.Ed 2d, at 163, 164.

Aside from the obvious fact that *Griggs* is a Title VII case involving solely issues of statutory construction and no Title VII claim has been made in this case, petitioner goes far beyond the application of the school district's policy to the facts of this case in an attempt to illustrate the parade of horrors that will result if this petition is denied.

Petitioner claims that school districts throughout the country will systematically eliminate women teachers "merely by passing the rule that teachers within the system may not be married to other teachers within the system". Petition, p. 11.

One need only suggest that if such a practice were indeed implemented, the aggrieved teachers would surely find a remedy for the wrong done them under the authority of Title VII and *Griggs*, but this unlikely possibility has no bearing whatever on this non-Title VII, constitutional claim, involving the termination of a male school principal who with full knowledge of a pre-existing school policy against the employment of both spouses in a principal-teacher situation; marries a teacher under his supervision.

The school board in exercising its discretion as to which of the two spouses to terminate, chose to terminate the spouse who was junior in tenure after the parties refused to determine which was to leave voluntarily, the principal or the teacher coach.

This comports with the only Title VII decision that could be found having anything like facts similar to the instant case. EEOC Decisions, No. 70-453, Case YBI 96-012, January 19, 1970, CCH Employment Practices Reporter §1250.40. In that case,

> ". . . company regulations which left the decision as to which spouse would be terminated to the employees involved, and which provided that the junior of the spouses would be terminated if the spouses could not decide. . . ."

did not constitute sex discrimination.

This school district policy is not neutral; it does exactly what it is intended to do, and what, on its face it appears to do — prohibit the employment of both spouses in a principal-teacher relationship — in order to avoid conflicts of interest, favoritism, staff morale problems and other deleterious effects on the educational system.

CONCLUSION

Based upon the foregoing, this Court should exercise its discretion and deny petitioner's writ of certiorari in this matter.

Respectfully submitted,

Peter S. Popovich and
Richard J. Sands of
PETERSON, POPOVICH,
KNUTSON & FLYNN, P.A.
314 Minnesota Bldg.
St. Paul, MN 55101
612 - 222-5515
Attorneys for Amicus Curiae
The Minnesota School Board
Association

Dated: June 27, 1975